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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JANG DAO THEUNG,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigra-  
tion for the Port of San Francisco,

Appellee.

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Transcript of Record.


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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

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FILED

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names of Attorneys of Record.**

For Petitioner and Appellant:

GEO. A. MCGOWAN, Esq., and JOHN L. MC-NAB, Esq., San Francisco, California.

For Respondent and Appellant:

UNITED STATES ATTORNEY, S. F., Calif.

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In the Southern Division of the United States District Court in and for the Northern District of California: Second Division.

No. 17817.

In the Matter of JANG DAO THEUNG On Habeas Corpus.

**Praecipe for Transcript on Appeal.**

To the Clerk of said Court:

Sir: Please make transcript of appeal in the above-entitled case, to be composed of the following papers, to wit:

1. Petition for writ.
2. Amended order to show cause.
3. Demurrer.
4. Minute order introducing immigration record at the hearing of demurrer.
5. Judgment and order denying petition.
6. Notice of appeal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.

10. Citation on appeal.
11. Stipulation on order respecting immigration record.
12. Clerk's certificate.

GEO. A. MCGOWAN,  
JOHN L. McNAB,  
Attorneys for Petitioner.

Service of the within praecipe, and receipt of a copy thereof, is hereby admitted this 6th day of June, 1923.

JOHN T. WILLIAMS,  
U. S. Attorney.

[Endorsed]. Filed Jun. 6, 1923. Walter B. Mal-  
ing, Clerk. By C. M. Taylor, Deputy Clerk. [1\*]

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In the Southern Division of the United States  
District Court in and for the Northern District  
of California: Second Division.

No. 17817.

In the Matter of JANG DAO THEUNG On Habeas  
Corpus.

(21405/7-24. Ex. SS. "Nanking," September 12,  
1922.)

**Petition for Writ.**

To the Honorable, United States District Judge,  
now presiding in the United States District  
Court, in and for the Northern District of  
California, Second Division:

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\*Page-number appearing at foot of page of original certified Trans-  
script of Record.



It is respectfully shown by the petition of the undersigned that Jang Dao Theung, hereafter in this petition referred to as "the detained," is unlawfully imprisoned, detained, confined and restrained of his liberty by John D. Nagle, Commissioner of Immigration for the Port of San Francisco, at the Immigration Station at Angel Island, county of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6th, 1882; July 5th, 1884; November 3d, 1893, and April 29th, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7th, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner intends to deport the said detained away from and out of the United States to the Republic of China.

That the said Commissioner claims that the said detained arrived at the port of San Francisco on or about the 12th day of September, 1922, on the SS. "Nankin," and thereupon made application [2] to enter the United States as the minor son of a resident Chinese merchant lawfully domiciled within the United States of America, and that the application of the said detained to enter the United

States upon said grounds was denied by the said Commissioner of Immigration, and that an appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration to the Secretary of Labor, and that the said Secretary thereafter dismissed the said appeal; that it is admitted by the Commissioner of Immigration that the said detained was admissible into the United States under the Acts of Congress approved Feb. 5, 1917, commonly known as the General Immigration Laws; that it is claimed by the said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing, that the action of the said commissioner and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statute in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner alleges, on his information and belief, that the hearing and proceedings had herein, and the action of the said Commissioner and the action of the said Secretary was and is in excess of the attorney committed to them by the said rules and regulations and by the said statute, and that the denial of the said application of the said detained to enter the United States as the minor son of a resident Chinese merchant lawfully domiciled within the United States was and is an abuse of the authority committed to them by the said statutes in each of the particulars as

hereinafter, and beginning on page 4 of this petition, set forth.

Your petitioner alleges, upon his information and belief, that it is admitted and conceded by the said Commissioner and the said Secretary of Labor, that Jang Sing, otherwise known as Jang Wey Ming, the person claiming to be the father of this [3] applicant, the detained herein, is a resident Chinese merchant lawfully domiciled within the United States, and that he is a member of Sue Sing Lung Company, a firm engaged in buying and selling merchandise at a fixed place of business at Fowler, California, and that he has been such a merchant for more than year prior to the application of the said detained to enter the United States, and that evidence of said facts, as required by law, has been given to the complete satisfaction of the said Commissioner and the said Secretary. It is further found and conceded to be a fact that the said detained is a minor, i. e., a person under the age of 21 years. It is further contended that the denial by the said Commissioner of the application of the detained to enter the United States was caused by the alleged disbelief in the existence of the relationship of father and son between the detained and the said Jang Sing, the person claiming to be his father, and the denial of the said Secretary of Labor of the appeal from the said excluding decision is likewise contended to be based upon said reason alone. It is further conceded that the evidence attesting the mercantile status of the said father was established by the testimony of two credible

witnesses other than Chinese, whose testimony further established the fact that during the said period of one year the said father had engaged in the performance of no manual labor of any kind or description save and excepting such as was incumbent upon him in the conduct of his said business as such merchant, and also established to the complete satisfaction of the said Commissioner and the said Secretary of Labor that the said father was a merchant as that term is defined in the said Chinese Exclusion Laws. Your petition hereinafter sets forth the allegations of unfairness in said hearing.

I.

Your petitioner alleges, upon his information and belief, that the hearing had in said matter before the said Commissioner and the said Secretary upon the questions of the claimed relationship [4] of father and son was unfair and prejudicial to the rights of the said detained and prevented him from having a full and fair opportunity to present the evidence in support of his application to enter the United States as such merchant's minor son, and also prevented and deprived him from having said evidence accorded the weight and recognition to which it was by law entitled. In this connection your petitioner alleges, upon his information and belief, that the evidence given in support of the application of the detained to enter the United States as such merchant's minor son was of such a conclusive kind and character that to refuse to be guided thereby, and to find contrary thereto,

was an abuse of the official discretion vested in the said Commissioner and the said Secretary, and has deprived and prevented this detained from a fair hearing and determination of his right to enter the United States, and that he is for said reason deprived of his liberty without due process of law.

## II.

Your petitioner alleges, upon his information and belief, that the denial by the said Commissioner of the application of the detained to enter the United States, made and entered herein was had and based upon the assumed fact that Jang Sing, the father of the said detained, had testified on November 18, 1911, that he was not married and had never been married, which statement conflicted with and was at variance with his testimony in the then application of the detained to enter the United States, the father having at the time in question been married and the father of this detained, but in this connection your petitioner alleges that the said father of the said detained was not confronted with said statement, nor was he given any opportunity to admit or deny the same, or make any explanation with respect thereto, all in violation of the instructions from the Department at Washington posted upon the bulletin board at Angel Island for the information and guidance of all interested therein and, among others, the attorney for this detained, [5] wherein the examining officers were admonished and directed that in all such instances the witnesses should be con-

fronted with such prior declarations and statements and be given an opportunity to make their explanations thereto and to submit evidence to overcome said prior adverse statement, but no such opportunity was given the father of this detained, and the application of the said detained to enter the United States was denied solely because of said prior adverse declaration without according the detained any opportunity to be heard thereon, and your petitioner alleges that had the father been confronted with said prior adverse declaration he could have testified and would have presented witnesses and overwhelming evidence which would have conclusively established the fact that he, the said father, was married and was the father of the said detained at the time of making said prior adverse declaration, and would have reasonably and feasibly explained the same to the complete and entire satisfaction of the said Commissioner and the said Secretary, and that the failure of the said immigration officials to so confront the father with the said prior adverse declaration has prevented and deprived him from being heard upon this the pivotal and crucial point in the matter of the said detained to enter the United States, and that for said reason this detained is deprived of his liberty without due process of law.

### III.

Your petitioner alleges, upon his information and belief, that after the said denial of the application of the detained to enter the United States there was presented before the Secretary of Labor

at Washington the joint affidavit of Jang Lou Wong, otherwise known as Sam Yick, and his wife Lee Jen, the affidavit of Wong Wing Sing, and the affidavit of Hong Gong Chong, which affidavits positively establish the fact that the father of the said detained was married and was the father of this detained, all as claimed by the said father in his examination herein, and also positively established the fact that at the time the [6] father stated he was not married, he was, in fact, married and was the father of this detained, all as more particularly and in detail set forth and contained in said affidavits; but that the said Secretary of Labor refused to examine or take the testimony of said witnesses, and refused to re-examine or confront the father with the said prior adverse declaration, and refused to give him any opportunity to explain the same, and thereupon dismissed the said appeal and denied the application of the said detained to enter the United States, and that the action of the said Secretary in refusing to take, hear and receive the testimony of the said additional witnesses, and in refusing to afford the father of the said detained the opportunity to be heard upon and in explanation of said prior adverse declaration, acted in an arbitrary manner and prevented the detained from submitting evidence upon his own behalf which would have conclusively established the fact that the said detained is, and was, the minor son of a resident Chinese merchant lawfully domiciled within the United States and hence would have rendered the said

detained admissible thereto, and because of said action of the said Secretary the said detained is deprived of his liberty without due process of law, he having been denied and deprived of a full and fair opportunity to present evidence upon his own behalf, and also having been denied and deprived of a fair hearing of his application to enter the United States.

#### IV.

Your petitioner alleges, upon his information and belief, that after the dismissal of the appeal of the said detained by the Secretary of Labor there was filed with the said Secretary a petition for a rehearing and a strong demand that the testimony of the additional witnesses who had been proffered, and whose affidavits had been filed, be taken, and that the said witnesses be examined, and that the father be re-examined touching the said prior declaration, and calling attention of the said secretary to the fact that this Honorable Court had shortly theretofore [7] held in the *habeas corpus* case of Low Joe, No. 17,673, that the administrative hearing and the decision of the said Secretary of Labor had been unfair because of the failure to examine witnesses and refusing to receive testimony as requested by counsel; and your petitioner alleges, upon his information and belief, that after considerable delay a rehearing in said case was directed by the said Secretary, the said detained assuming that the said rehearing had been granted because of a belief in the mind of the said Secretary that his former decision was erroneous and that



the applicant had been denied a fair hearing, and so believing, the said detained did not then and there prosecute his application for a writ of habeas corpus, as he was by law entitled to do, but accepted said hearing; that thereafter the said additional examination was fully and fairly conducted and held and that the said witnesses were fully heard upon the said matters in dispute by Immigration Inspector Moore at Fresno, California, on or about the 29th day of January, 1923, but immediately thereafter said application to land was denied by the said Commissioner, and on appeal taken therefrom the attorney for the detained had access to the immigration record, and then for the first time found and discovered that said rehearing had been directed, according to the information and belief of your petitioner, not because of any conception or belief of injustice in the mind or judgment of the said Secretary in the prior proceeding had herein, but because of the following holding of the said Secretary with respect thereto:

“The record contains the affidavit of two persons who claim to have a knowledge on the essential facts. These affidavits were considered when the case was previously before the Board of Review, and the conclusion was reached that it would be unnecessary to delay disposing of the case until the testimony of the affiants could be taken, provided the affidavits were considered as embodying substantially what the affiants would testify to. Counsel also pointed out in his brief that the immigra-

tion officials, in examining the alleged father, had failed to question him regarding his testimony of 1911, during the course of which he made statements inconsistent with the claims of paternity now advanced. This point likewise was not regarded as of sufficient importance to call for the return of the record to San Francisco." [8]

Your petitioner alleges, upon his information and belief, that the real reason why the said Secretary ordered a reopening in this case was to prevent the detained from applying for a writ of habeas corpus and having the issues tried before this Court upon the merits, all as disclosed in the concluding portion of the order of the said Secretary, which is as follows:

"Counsel has invited the attention of the Board of Review to a recent decision of the District Court at San Francisco in the case of a Chinese named Low Joe, whose exclusion was directed by the Department. In that case in which there were numerous material discrepancies, the Department directed reopening after one writ of habeas corpus had been dismissed, for the purpose of receiving additional evidence. The examining officers at Angel Island during the course of supplemental hearing in the Low Joe case, failed to examine him regarding the discrepancies in the record as it was originally made up, and the court held this to be unfair. This impresses the Board of Review as somewhat remarkable, but the

United States Attorney at San Francisco does not believe an appeal to be advisable, and it is, therefore, likely that the District Court, if the case of Jang Dao Theung were to come before it, would, reasoning along lines similar to the Low Joe case, hold this hearing also to be unfair, because the alleged father was not questioned regarding his 1911 testimony. For this reason it would seem to be advisable to reopen the case, and as long as delay is now inevitable there is no real reason for not also taking the testimony of the additional witness. The Board of Review recommends that the case be reopened in order that the testimony of the additional witnesses may be taken, and also, in order that the father may have an opportunity to submit such explanation as he may be advised of his 1911 statements.”

Your petitioner alleges that the action of the said Commissioner in again denying the application of the detained to enter the United States and the action of the said Secretary in dismissing the appeal taken from the excluding decision of the said Secretary was an abuse of the discretion vested in them in this, that your petitioner alleges, upon his information and belief, that the evidence and testimony presented at said rehearing was so positive and conclusive attesting the right of the applicant to be admitted into the United States as the minor son of a resident Chinese merchant lawfully domiciled therein, that said evidence was so clear and convincing and so positive that the said Commis-

sioner and the said Secretary acted unreasonably and arbitrarily in rejecting it, and that they acted under fundamentally incorrect assumptions of law in so doing; the [9] reasonableness of said evidence was so positive and conclusive in its character and its nature that to refuse to be guided thereby and in accordance therewith was, your petitioner alleges, upon his information and belief, an abuse of the official discretion vested in the said Commissioner and the said Secretary.

## V.

Your petitioner alleges, upon his information and belief, that the said Commissioner and the said Secretary, have acted under fundamentally incorrect assumptions of law in weighing and considering the evidence presented upon behalf of the said detained and in discrediting the said evidence and denying the application of the detained to enter the United States, and in this particular, and in this regard, your petitioner alleges, upon his information and belief, that there being alleged to exist a prior declaration of the father that he was not married made at a time when, according to the testimony and the evidence given in support of the application of the detained to enter the United States the father was, in fact, married and the father of this detained, that the said officials, and each of them, have considered the said prior adverse declaration as an absolute bar to the existence of the relationship herein claimed, and have accepted and considered the said prior adverse declaration or statement as absolutely controlling and precluding the existence

of the relationship of father and son between the said detained and his father, and while accepting evidence in explanation and contradiction of the said prior adverse declaration the said officials have refused, according to the information and belief of your petitioner, to consider and weigh said evidence, or accorded the weight and legal effect which it is entitled to by law, or to accord to it any weight whatsoever but, on the contrary, have considered said prior declaration as absolutely controlling and a bar to the favorable consideration upon any evidence given to the contrary, and because of said fundamental incorrect assumption of law the detained has been prevented and deprived of a [10] fair hearing and a fair consideration of his application to enter the United States and is, for said reason, deprived of his liberty without due process of law.

That your petitioner has not in his possession any part or parts of the said proceedings (except as herein set forth) had before the said Commissioner and the said Secretary, that the parts of said proceedings formerly in the possession of your petitioner were forwarded to Washington for use by the attorney for the detained pending the appeal before the said Secretary, and the said adverse decision of the said Secretary having been transmitted by telegraph the said copy is now in the mails between Washington and San Francisco, and it is for said reason impossible for your petitioner to annex hereto any part or parts of said immigration records; but your petitioner is willing to in-

corporate as part and parcel of his petition, the said immigration record when the same shall have been received from the Secretary of Labor at Washington and shall have it presented to this Court at the hearing to be had hereon.

That it is the intention of the said Commissioner to deport the said detained out of the United States and away from the land of which his father now enjoys a permanent domicile, by the SS. "Nanking," which according to the information and belief of your petitioner, is scheduled to sail from the port of San Francisco on or about April 19, 1923, at about one o'clock P. M. of said day, and unless this Court intervenes to prevent said deportation, the said detained will be deprived of residence within the United States.

That the said detained is in detention, as aforesaid, and for said reason is unable to verify this said petition upon his own behalf and for said reason petition is verified by your petitioner but for and as the act of the said detained, and upon his own behalf.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner of [11] Immigration commanding and directing him to hold the body of the said detained within the jurisdiction of this Court, and to present the body of the said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired

into to the end that the said detained may be restored to his liberty and go hence without day.

Dated at San Francisco, California, April 10th, 1923.

JUNG HING.

GEO. A. McGOWAN.

GEO. A. McGOWAN, Esq.,

Attorney for Petitioner,

550 Montgomery Street, San Francisco, Calif.

United States of America,  
Southern Division of the Northern  
District of the State of California,  
City and County of San Francisco,—ss.

The undersigned, being first duly sworn, according to law, doth depose and say:

That your affiant is the petitioner named in the foregoing petition; that the same has been read and explained to him and that he knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

JUNG HING.

Subscribed and sworn to before me this 10th day of April, 1923.

[Seal]

R. H. JONES,

Notary Public.

[Endorsed]: Filed Apr. 13, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17817.

In the Matter of JANG DAO THEUNG, on Habeas Corpus. (21405/7-24 Ex SS. "Nanking," September 12, 1922.)

**Amended Order to Show Cause.**

Upon motion of Geo. A. McGowan, Esq., attorney for petitioner, the Order to Show Cause heretofore issued herein on the 13th day of April, 1921, is hereby vacated and set aside, and

GOOD CAUSE APPEARING THEREFOR, and upon reading the verified petition on file herein:

IT IS HEREBY ORDERED that John D. Nagle, Commissioner of Immigration for the port of San Francisco, appear before this Court on the 21st day of April, 1923, at the hour of 10:00 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order be served upon the said commissioner.

AND IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, as aforesaid, or whoever, acting upon the orders of the said commissioner or the Secretary of Labor, shall have the custody of the said Jang Dao Theung, are hereby ordered and directed to retain the said Jang Dao Theung within the custody of the said



Commissioner of Immigration, and within the jurisdiction of this court until its further order herein.

Dated at San Francisco, California, April 20th, 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

[Endorsed]: Filed Apr. 20, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [13]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17817.

In the Matter of JANG DAO THEUNG, on Habeas Corpus.

**Demurrer to Petition for Writ of Habeas Corpus.**

Comes now the respondent, John D. Nagel, Commissioner of Immigration, at the port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony

taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,  
 United States Attorney,  
 ALMA M. MYERS,  
 Asst. United States Attorney,  
 Attorneys for Respondent.

[Endorsed]: Filed May 19, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
 [14]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 19th day of May, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 17,817.

In the Matter of JANG DAO THEUNG, on Habeas Corpus.

**Minutes of Court—May 19, 1923—(Order Sustaining Demurrer and Denying Petition for Writ).**

This matter came on regularly this day for hearing on order to show cause as to the issuance of a writ of habeas corpus herein. Geo. A. McGowan,

Esq., was present as attorney for petitioner and detained. Miss Alma M. Meyers, Asst. U. S. Atty., was present for and on behalf of respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as Respondent's Exhibits "A," "B," "C," "D," "E" and "F" and that the same be considered as part of original petition. After argument by the respective attorneys, the Court ordered that said matter be and the same is hereby submitted. After due consideration had thereon, the Court ordered that said demurrer to petition for writ of habeas corpus be and the same is hereby sustained, the petition for writ of habeas corpus denied and order to show cause discharged.

On motion of Mr. McGowan, further ordered execution of deportation stayed for period of ten (10) days. [15]

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In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17,817.

In the Matter of JANG DAO THEUNG on Habeas Corpus.

**Notice of Appeal.**

To the Clerk of the Above-entitled Court and to the Honorable John T. Williams, United States Attorney for the Northern District of California:

You, and each of you, will please take notice that

Jang Dao Theung, the petitioner and the detained above named, does hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, from the order and judgment made and entered herein on the 19th day of May, 1923, sustaining the demurrer to and in denying the petition for a writ of habeas corpus filed herein.

Dated at San Francisco, California, June 5th, 1923.

GEO. A. MCGOWAN,  
JOHN L. McNAB,

Attorneys for Petitioner and Appellant Herein.

[16]

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In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17,817.

In the Matter of JANG DAO THEUNG on Habeas Corpus.

**Petition for Appeal.**

Now comes Jang Dao Theung, the petitioner, the detained, and the appellant herein, and says:

That on the 19th day of May, 1923, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will

more fully appear from the assignment of errors filed herewith.

WHEREFORE, this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States, for the Ninth Circuit thereof, for the correction of the errors so complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof; and further, that the custody of the said detained be not disturbed during the further proceedings to be had herein and until the further order of this Court so that the said detained may be rendered available and produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, June 5th, 1923.

GEO. A. MCGOWAN,

JOHN L. McNAB,

Attorneys for Petitioner and Appellant Herein.

[17]

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In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17,817.

In the Matter of JANG DAO THEUNG on Habeas Corpus.

**Assignment of Errors.**

Comes now Jang Dao Theung, by his attorneys, Geo. A. McGowan and John L. McNab, in connection with his petition for an appeal herein, assigns the following errors which he avers occurred upon the trial or hearing of the above-entitled cause, and upon which he will rely, upon appeal to the Circuit Court of Appeals, for the Ninth Circuit, to wit:

First. That the Court erred in dismissing the writ, and in denying the petition for a writ of habeas corpus herein.

Second. That the Court erred in holding that it has no jurisdiction to issue a writ of habeas corpus as prayed for in the petition herein.

Third. That the Court erred in dismissing the writ and in denying the petition of habeas corpus herein and remanding the petitioner to the custody of the Immigration authorities for deportation.

Fourth. That the Court erred in holding that the allegations contained in the petition herein for a writ of habeas corpus and the facts presented upon the issue made and joined herein were insufficient in law to justify the discharge of the petitioner from custody as prayed for in said petition.

Fifth. That the judgment made and entered herein is contrary to law.

Sixth. That the judgment made and entered herein is not supported by the evidence.

Seventh. That the judgment made and entered herein is contrary to the evidence. [18]

WHEREFORE, the appellant prays that the judgment and order of the Southern Division of the United States District Court for the Northern District of the State of California, Second Division, made and entered herein in the office of the Clerk of the said court on the 19th day of May, 1921, discharging the writ of habeas corpus theretofore issued and in denying the petition for a writ of habeas corpus, be reversed, and that this cause be remitted to the said lower Court with instructions to discharge the said Jang Dao Theung from custody, or grant him a new trial before the lower court, by directing the issuance of the writ of habeas corpus as prayed for in said petition.

Dated at San Francisco, California, June 5th, 1923.

GEO. A. McGOWAN,  
JOHN L. McNAB,

Attorneys for Petitioner and Appellant.

Service of the within and receipt of a copy thereof, is hereby admitted this 6th day of June, 1923.

JOHN T. WILLIAMS,  
United States Attorney.  
ALMA M. MYERS,  
Asst. U. S. Atty.

[Endorsed]: Filed Jun. 6, 1923. Walter B. Mal-  
ing Clerk. By C. M. Taylor, Deputy Clerk. [19]

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17,817.

In the Matter of JANG DAO THEUNG on Habeas Corpus.

**Order Allowing Petition on Appeal.**

On this 6th day of June, 1923, comes Jang Dao Theung, the detained herein, by his attorneys, Geo. A. McGowan, and John L. McNab, and having previously filed herein, did present to this Court, his petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court allows the appeal hereby prayed for, and orders execution and remand stayed pending the hearing of the said case in the said United States Circuit Court of Appeals for the Ninth Circuit; and it is further ordered that the respondent herein retain the said detained person within the jurisdiction of this Court, and that he do not depart from the



jurisdiction of this Court, but remain and abide by whatever judgment herein is finally rendered.

Dated at San Francisco, California, June 6th, 1923.

M. T. DOOLING,  
United States District Judge.

Service of the within and receipt of a copy thereof, is hereby admitted this 6th day of June, 1923.

JOHN T. WILLIAMS,  
United States Attorney.  
ALMA M. MYERS,  
Asst. U. S. Atty. [20]

[Endorsed]: Filed Jun. 6, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [21]

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In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 17,817.

In the Matter of JANG DAO THEUNG, on Habeas Corpus.

**Stipulation and Order Re Withdrawal of Immigration Record.**

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the petitioner and appellant herein, and the attorney for the respondent and appellee herein, that the original immigration record in evidence and con-

sidered as part and parcel of the petition for a writ of habeas corpus upon hearing the demurrer in the above-entitled matter, may be withdrawn from the files of the clerk of the above-entitled court and filed with the clerk of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, there to be considered as part and parcel of the record on appeal in the above-entitled case with the same force and effect as if embodied in the transcript of the record and so certified to by the clerk of this court.

Dated at San Francisco, California, June 6th, 1923.

GEO. A. McGOWAN,  
JOHN L. McNAB,

Attorneys for Petitioner and Appellant.

JOHN T. WILLIAMS,  
United States Attorney for the Northern District  
of California. Attorney for Respondent and  
Appellee. [22]

#### ORDER.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration record therein referred to, may be withdrawn from the office of the clerk of this court and filed in the office of the clerk of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by the clerk of this court.

M. T. DOOLING,  
United States District Court.

Dated at San Francisco, California, June 7, 1923.

Service of the within stipulation and order and receipt of a copy thereof is hereby admitted this 6th day of June, 1923.

J. T. WILLIAMS,  
U. S. Attorney.

[Endorsed]: Filed Jun. 7, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [23]

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**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 23 pages, numbered from 1 to 23 inclusive, contain a full, true and correct transcript of certain records and proceedings in the Matter of Jang Dao Theung, on Habeas Corpus, No. 17,817, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript on appeal (copy of which is embodied herein) and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Nine Dollars and Seventy Cents (\$9.70) and that the same has been paid to me by the attorney for appellant herein.

Annexed hereto is the original citation on appeal (page 25).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of June, A. D. 1923.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [24]

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### Citation on Appeal.

United States of America,—ss.

The President of the United States to John D. Nagle, Commissioner of Immigration for the Port of San Francisco, and John T. Williams, United States Attorney for the Northern District of California, His Attorney herein,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern Division of the Northern District of California, Second Division, wherein Jang Dao Theung is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorabe MAURICE T. DOOLING, United States District Judge for the Southern Division of the Northern Dist. of California, this 6th day of June, A. D. 1923.

M. T. DOOLING,  
United States District Judge.

Service of the within citation and receipt of a copy thereof is hereby admitted this 6th day of June, 1923.

J. T. WILLIAMS,  
U. S. Attorney for Appellee.

This is to certify that a copy of the within citation on appeal was lodged with me as the Clerk of this court upon the 6th day of June, 1923.

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Clerk U. S. Dist. Court in and for the Nor. Dist. of Calif., at San Francisco.

[Endorsed]: No. 17,817. United States District Court for the Southern Division of the Northern District of California, Second Division. In re: Jang Dao Theung on Habeas Corpus, Appellant, vs. John D. Nagle, Commissioner of Immigration for the Port of San Francisco, Appellee. Citation on Appeal. Filed Jun. 7, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [25]

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[Endorsed]: No. 4053. United States Circuit Court of Appeals for the Ninth Circuit. Jang Dao Theung, Appellant, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Fran-

cisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Received July 2, 1923.

F. D. MONCKTON,  
Clerk.

Filed July 6, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.